IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL REVN.APPLICATION NO.381 OF 2006

IN

SESSIONS CASE NO.152 OF 2004

Manik Shripat Kale & Anr. ..Applicants

Versus

The State of Maharashtra ..Respondent

Mr. D.B.Tare for applicants

Mr. Y.M.Nakhwa, APP for State

CORAM : S.C.DHARMADHIKARI,J.

DATE : 14TH NOVEMBER, 2006

P.C.:

1. This application is directed against the judgment and order of the Sessions Judge, Raigad-Alibag in Criminal Appeal No.23 of 2005 which is delivered on 26.7.2006.

2. The criminal appeal was directed against the judgment and order passed in Sessions Case No.152 of 2004 on 28.4.200 by 2nd Ad-hoc Asstt. Sessions Judge, Raigad-Alibag.

3. The applicant before me is original accused no.1. He along with other accused faced trial for offences punishable under Sections 395, 397, 336 and 504 of IPC.

4. Since the judgment and order was of the Adhoc Asstt. Sessions Judge the appeal was preferred in terms of Section 374(3) of IPC to the Sessions Judge. It appears that the applicant along with others have been convicted of the aforesaid offences and sentenced to undergo R/I for five years. The accused No.7 was also sentenced to undergo imprisonment for the period already spent in jail.

5. The appeal was preferred by the original accused nos.1 to 6 and 8. The applicant is the original accused no.1.

6. The learned Sessions Judge has dismissed the appeal. The points for determination framed by him would

reveal that the learned Sessions Judge has proceeded on the basis that the accused have committed dacoity at the house of the informant in the early hours of 7.6.2004 using deadly weapons. Although this point for determination has been framed, I find from the reasons assigned to uphold the conviction and sentence, that there is absolutely no reference to the rival contentions. There is absolutely no discussion with regard to the role of the accused in the crime. There are several points which were highlighted in the memo of appeal including holding of the identification parade. Serious allegations were made therein with reference to the evidence of the Executive Magistrate. Amongst others, the grounds in the memo of appeal raised a question as to whether the procedure prescribed in Criminal Manual has to be strictly followed and assuming that provisions in that behalf are directory whether its breach has caused any prejudice to the accused. Similarly, there is also a grievance raised with regard to the appreciation and appraisal of the evidence of the prosecution witnesses including that of the informant. It is mentioned that P.W.1 original informant had stated on oath that ordinarily while sleeping in his bed room, his habit was to keep at least one light on. There is a discussion with regard to the

availability of electric supply in the village and whether in these circumstances, the applicant was identified as one of the persons who have entered the house with the intention of committing the offence which is alleged, is not clear. Similarly, a grievance is raised with regard to the recovery as well.

7. Time and again the Supreme Court has highlighted the importance of a criminal appeal against conviction and sentence. The entire judgement of the trial court is laid bare before the appellate court. As a first appellate court it can go into all the materials which are produced before the trial court. It can also undertake reappreciation of materials produced in accordance with law. In this context, a reference can usefully be made to the decision of the Hon'ble Supreme Court reported in **AIR 2004 SC page 26 (Badam Singh vs. State of Madhya Pradesh)**. While observing about the duty of First Appellate Court this is what the Supreme Court holds :

> "16. The learned Sessions Judge after considering the evidence on record and accepting the evidence of the eye witnesses found the

appellant guilty of the offence under S.302 I.P.C. and sentenced him to imprisonment for life. The High Court by its impugned judgment dismissed the appeal preferred by the appellant. We have perused the impugned judgment of the High Court. The High Court which was the first court of Appeal did not even carefully appreciate the facts of the case. It mentions that the FIR was lodged by PWs-5 and 6 whereas the fact is that the FIR was lodged by PW-4, the Forest Officer. Without subjecting the evidence on record to a critical scrutiny, the High Court was content with saying that the three eye witnesses having deposed against the appellant, the prosecution had proved its case beyond reasonable doubt. In our view, the High Court has not approached the evidence in the manner it should have done being the first Court of Appeal. The mere fact that the witnesses are consistent in what they say is not a sure guarantee of their truthfulness. The witnesses are subjected to cross-examination to bring out facts which may persuade a Court to hold, that though consistent, their evidence is not acceptable for any other reason. If the Court

> comes to the conclusion that the conduct of the witnesses is such that it renders the case of the prosecution doubtful or incredible, or that their presence at the place of occurrence as eye witnesses is suspect, the Court may reject their evidence. That is why it is necessary for the High Court to critically scrutinize the evidence in some detail, it being the final court of fact. We have therefore gone through the entire evidence on record with the assistance of counsel for the parties."

8. In the above circumstances, the revision application succeeds. The judgment and order of the lower appellate court is set aside. The criminal appeal no.23 of 2005 is restored to the file of the learned Sessions Judge, Raigad-Alibag for disposal afresh on merits in accordance with law.

9. On the earlier occasion this applicant had preferred an bail application in this court that was on the footing that the appeal is pending before the court below. The appeal came to be disposed of. My attention

is invited to the order passed by this court on 30.8.2006 in criminal application no.2438 of 2006. In my view since the appeal is being restored to file it would be proper to enlarge the present applicant on bail. The order passed on 30.8.2006 granting bail in the sum of Rs.5,000/- with one or two local sureties with other conditions shall operate during the pendency of the criminal appeal.

10. The learned Sessions Judge or concerned appellate authority shall endeavour and dispose of the appeal as expeditiously as possible and in any event by 30th April 2007. In the peculiar facts of this case even if the revision applicants are the original accused nos.1 and 6 since the manner in which the appeal has been decided has been found to be faulty it would be proper if the criminal appeal is heard as a whole. It would be open for the other accused to make appropriate submissions with regard to their conviction and sentence by the trial judge as well. This direction is issued in the peculiar facts and circumstance of this court and shall not be treated as a precedent in all such cases.

(S.C.Dharmadhikari, J.)